

REMARKS / DISCUSSION OF ISSUES

Claims 1-14 and 15-19 are pending in the application. Claims 1, 9, 18 and 19 are independent. Claims 18 and 19 are new.

Amendments to the claims are made for non-statutory purposes such as to overcome objections, or to delete European-style phraseology from the claims. No new matter is added.

Objection to the Claims

The amendments to claims 5, 6 and 8 are believed to address completely all objections of record. Withdrawal of the objections is respectfully requested.

Allowable Subject Matter

Applicants acknowledge with thank the indication of allowability of claim 15. New claim 18 includes the subject matter of claims 9 and 15. Thus, claim 18 is believed to be allowable. Furthermore, claim 19, which is drawn to an electroluminescent device, includes features similar to those of the method of claim 18. Therefore, claim 19 is also believed to be in condition for allowance.

Objections to the Drawings

Applicants have reviewed the objections to the drawings and respectfully submit that the objections are improper and should be withdrawn.

In essence, the Examiner objects to the reference character 19-1's placement in Figs. 5D, 5E, 6 and 7 alleging inconsistencies between the drawings. Applicants disagree for at least the following reasons.

First, the Office Action asserts that 19-1 is pointing to a recess 21. Character 19-1 points out a contact region, and not a recess. Second, the position of the contact region 19-1 is consistent throughout. Differences in positioning may be by drafter's convenience and the relation of the arrows and reference characters to a recess is not

required to be consistent so long as the contact region itself is to the extent necessary. Finally, Fig. 6 is a variant connection to the structure of Fig. 4; and Fig. 7 is another variant not directed to any specific previous drawing. Thus, it is uncertain why comparisons of Figs. 5D, 5E, 6 and 7 are being made.

In view of the foregoing, Applicants submit that no amendments to the drawings are needed at this time.

Rejections under 35 U.S.C. § 102

Claims 1, 6-9, 16 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Toyota Corp.* (JP2002313572A).¹ For at least the reason set forth herein, Applicants respectfully submit that the rejection is improper and should be withdrawn.

Claim 1 is drawn to an electroluminescent device and features:

a substrate, a light emissive structure on the substrate, the light emissive structure comprising organic light emissive material disposed between first and second electrode layers for supplying charge carriers into the organic material to cause it to emit light, the first and second electrode layers respectively underlying and overlying the organic light emissive material, and an electrically conductive region underlying the light emissive structure on the substrate, the second overlying electrode layer and the underlying conductive region being in electrical connection through the thickness of the organic light emissive material.

Claim 9 is drawn to a method of fabricating an electroluminescent device, and includes similar features.

1. The Office Action does not comply with MPEP § 706.02

The Office Action relies on *Toyota Corp.* for the alleged disclosure of all features of claims 1 and 9. Applicants respectfully submit that it appears that the full publication is not relied upon, but rather only the English-language abstract thereof. Applicants

¹ As discussed more fully herein, the reference cited is an English-language Abstract of JP Publication 2002313572, and not the publication itself.

respectfully submit that the Office Action fails to comply with MPEP § 706.02, which states:

“Prior art uncovered in searching the claimed subject matter of a patent application often includes English language abstracts of underlying documents, such as technical literature or foreign patent documents which may not be in the English language. **When an abstract is used to support a rejection, the evidence relied upon is the facts contained in the abstract, not additional facts that may be contained in the underlying full text document. Citation of and reliance upon an abstract without citation of and reliance upon the underlying scientific document is generally inappropriate where both the abstract and the underlying document are prior art.** See *Ex parte Jones*, 62 USPQ2d 1206, 1208 (Bd. Pat. App. & Inter. 2001) (unpublished). **To determine whether both the abstract and the underlying document are prior art, a copy of the underlying document must be obtained and analyzed.** If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection. The record must also be clear as to whether the examiner is relying upon the abstract or the full text document to support a rejection. **The rationale for this is several-fold. It is not uncommon for a full text document to reveal that the document fully anticipates an invention that the abstract renders obvious at best. The converse may also be true, that the full text document will include teachings away from the invention that will preclude an obviousness rejection under 35 U.S.C. 103, when the abstract alone appears to support the rejection.** An abstract can have a different effective publication date than the full text document. Because all patentability determinations are fact dependent, obtaining and considering full text documents at the earliest practicable time in the examination process will yield the fullest available set of facts upon which to determine patentability, thereby improving quality and reducing pendency. When both the abstract and the underlying document qualify as prior art, the underlying document should normally be used to support a rejection. In limited circumstances, it may be appropriate for the examiner to make a rejection in a non-final Office action based in whole or in part on the abstract only without relying on the full text document. In such circumstances, the full text document and a translation (if not in English) may be supplied in the next Office action. Whether the next Office action may be made final is governed by MPEP § 706.07(a).”

In the present case, Applicants note that while the entire document (in Japanese) is of record, only the English-language appears to be relied upon in the Office Action. To wit, no translation of the *Toyota Corp.* document appears to be of record in the present application. As such, it appears that the rejection is improper for failing to comply with the cited portion of the MPEP.

Applicants recognize that the reference relied upon in the Office Action was cited in an IDS. Although there is no mandate that Applicants provide any translations, in the interest of fairness, the undersigned attempted to garner a US or other English-language counterpart of the *Toyota Corp.* reference from the USPTO website and from the EP website. Through this no English language counterpart was uncovered; and from a 'family' search of the EP site, it appears that the only filing was in Japan.

Accordingly, Applicants respectfully submit that they are entitled to a full English-language translation of the underlying Japanese document to *Toyota Corp.* to ensure complete and proper examination of the pending claims. Moreover, if after considering the translation, the Examiner maintains any rejection based thereon, Applicants submit that such a rejection can only be non-final.

Finally, Applicants note that in the body of the rejection (e.g., item 7 of the Office Action), reference is made to various elements in the drawing of *Toyota Corp.* For instance, the Office Action states that the light emissive layer 32A is between first and second electrode layers 31a and 33a. However, there is no description whatsoever of these layers in the English-language abstract. Moreover, the Office Action refers to 32A as the organic material 32a and there is no such description of this layer in the abstract, let alone its composition. In addition to supporting the rationale of why a translation of the entirety of *Toyota Corp.* is necessary, Applicants point out the assertions of the Office Action as being unsupported by the abstract.

For at least the reasons set forth above, Applicants respectfully submit that a *prima facie* case of anticipation has not been provided, and the rejection of claims 1 and 9 is wholly improper and should be withdrawn.

Rejections under 35 U.S.C. § 103

The rejections under this section of the Code have been considered. First, Applicants note that the rejection also improperly relies on *Toyota Corp.* and is flawed for at least the same reasons as those provided above. Second, claims 2, 4, 5 and 14 depend from claims 1 and 9, which are patentable at least because a *prima facie* case of anticipation has not been established.

Conclusion

In view the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:
Phillips Electronics North America Corp.

s/William S. Francos/

by: William S. Francos (Reg. No. 38,456)

Date: May 8, 2008

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